

Source: [Legal](#) > [States Legal - U.S.](#) > [New Jersey](#) > [Find Cases](#) > [NJ State Cases, Combined](#)Terms: [Baures v. Lewis](#) ([Edit Search](#) | [Suggest Terms for My Search](#) | [Feedback on Your Search](#))☒ Select for FOCUS™ or Delivery167 N.J. 91, \*; 770 A.2d 214, \*\*;  
2001 N.J. LEXIS 499, \*\*\*

CARITA L. BAURES, PLAINTIFF-APPELLANT, v. STEVEN R. LEWIS, DEFENDANT-RESPONDENT.

A-135 September Term 1999

SUPREME COURT OF NEW JERSEY

167 N.J. 91; 770 A.2d 214; 2001 N.J. LEXIS 499

January 17, 2001, Argued  
April 23, 2001, Decided**PRIOR HISTORY:** [\*\*\*1] On certification to the Superior Court, Appellate Division.**CASE SUMMARY****PROCEDURAL POSTURE:** A Superior Court, Appellate Division (New Jersey) judgment affirmed the denial of plaintiff custodial mother's request to remove herself and her child out of New Jersey after defendant noncustodial father objected. Plaintiff appealed. The Supreme Court of New Jersey granted certification.**OVERVIEW:** The parents were divorced. Their child had pervasive developmental disorder, a form of autism, and was receiving special treatment in New Jersey. Plaintiff was receiving physical help from her parents, but her parents' home was Wisconsin. Plaintiff's financial picture was tight. Plaintiff wanted to move to Wisconsin to live near her parents. Plaintiff described the special programs available there. Defendant father objected to the move. Therefore, [N.J. Stat. Ann. § 9:2-2](#) required the courts to approve the removal. [Section 9:2-2's](#) purpose was to preserve the familial relationship rights of the noncustodial parent and the child. The supreme court clarified in detail the procedural and substantive requirements for a court to give its removal approval and established a 12 factor test to determine whether the move was inimical to the child's interests. Visitation was but one element, not an independent prong. The burden was on the custodial parent, who sought to relocate, to prove two things: a good faith motive and that the move was not inimical to the interests of the child. The supreme court remanded for the trial court to follow the enunciated tests and procedure.**OUTCOME:** The supreme court reversed the judgment and remanded the matter for further proceedings consonant with their opinion.**CORE TERMS:** custodial parent, noncustodial parent, removal, visitation, custody, relocation, divorce, good faith, best interests, relocate, visitation schedule, custodial, child's interests, educational, disorder, autism, visitation rights, electronics', inimical, produce evidence, programming, distance, technician, happiness, emotional, regular, motive, skill, public school, comparability**LEXISNEXIS® HEADNOTES**

Hide

[Family Law](#) > [Child Custody](#) > [Enforcement](#) > [General Overview](#)**HN1** Noncustodial parents may relocate to pursue other interests regardless of the strength of the bond they have developed with their children. Custodial parents may do so only with the consent of the former spouse. Otherwise, a court application is required. [More Like This Headnote](#) | [Shepardize: Restrict By Headnote](#)[Family Law](#) > [Child Custody](#) > [Enforcement](#) > [General Overview](#)[Family Law](#) > [Parental Duties & Rights](#) > [General Overview](#)**HN2** The Supreme Court of New Jersey has struggled to accommodate the interests of parents and children in a removal situation in prior cases. In so doing, the supreme court has developed something of a hybrid scheme. Although it is not based upon a presumption in favor of the custodial parent, it does recognize the identity of the interests of the custodial parent and the child, and, as a result, accords particular respect to the custodial parent's right to seek happiness and fulfillment. At the same time, it emphasizes the importance of the noncustodial parent's relationship with the child by guaranteeing regular communication and contact of a nature and quality to sustain that relationship. Further, it incorporates a variation on a best interests analysis by requiring proof that the child will not suffer from the move. [More Like This Headnote](#) | [Shepardize: Restrict By Headnote](#)[Family Law](#) > [Child Custody](#) > [Enforcement](#) > [General Overview](#)**HN3** In a removal case, the court should inquire about the capacity of the noncustodial parent to relocate as a method of

ensuring the vitality of a shared custody arrangement. [More Like This Headnote](#) | [Shepardize: Restrict By Headnote](#)

[Family Law > Child Custody > Enforcement > General Overview](#)

[Family Law > Guardians > General Overview](#)

[Family Law > Marital Termination & Spousal Support > General Overview](#)

**HN4** Social science research links a positive outcome for children of divorce with the welfare of the primary custodian and the stability and happiness within that newly formed post-divorce household. [More Like This Headnote](#)

[Family Law > Child Custody > Enforcement > General Overview](#)

[Family Law > Child Custody > Visitation > General Overview](#)

[Family Law > Marital Termination & Spousal Support > General Overview](#)

**HN5** Research also affirms the importance of a loving and supportive relationship between the noncustodial parent and the child. What it does not confirm is that there is any connection between the duration and frequency of visits and the quality of the relationship of the child and the noncustodial parent. Although confidence that he or she is loved and supported by both parents is crucial to the child's well-being after a divorce, no particular visitation configuration is necessary to foster that belief. In short, a happy, productive, supportive custodial household along with a loving, sustaining relationship with the noncustodial parent are what is necessary to the adjustment of a child of divorce. [More Like This Headnote](#) | [Shepardize: Restrict By Headnote](#)

[Family Law > Child Custody > Enforcement > General Overview](#)

**HN6** Many courts have significantly eased the burden on custodial parents in removal cases. [More Like This Headnote](#) | [Shepardize: Restrict By Headnote](#)

[Family Law > Child Custody > Enforcement > General Overview](#)

**HN7** The New York Court of Appeals has replaced the "exceptional circumstances" requirement with a general "best interests" test in relocation cases. [More Like This Headnote](#)

[Family Law > Child Custody > Enforcement > General Overview](#)

[Family Law > Parental Duties & Rights > Duties > General Overview](#)

**HN8** The California Supreme Court has abandoned the prior hostile approach taken toward the custodial parent in relocation cases. The supreme court rejected a rigid test that required a custodial parent to show a "necessity" for the move and said, the necessity of relocating frequently has little, if any, substantive bearing on the suitability of a parent to retain the role of a custodial parent. A parent who has been the primary caretaker for minor children is ordinarily no less capable of maintaining the responsibilities and obligations of parenting simply by virtue of a reasonable decision to change his or her geographical location. In place of the necessity test, the supreme court directed the lower courts to take into account the custodial parent's "presumptive right" to move. [More Like This Headnote](#) | [Shepardize: Restrict By Headnote](#)

[Family Law > Child Custody > Awards > Standards > Best Interests of Child](#)

[Family Law > Child Custody > Enforcement > General Overview](#)

**HN9** The Colorado Supreme Court has held that the child's interests are so interwoven with the new family unit that a court must consider the custodial parent's interests. The supreme court stated: The child's best interests are served by preserving the custodial relationship, by avoiding relitigation of custody decisions, and by recognizing the close link between the best interests of the custodial parent and the best interest of the child. In a removal dispute, this leads logically to a presumption that the custodial parent's choice to move with the children should generally be allowed. [More Like This Headnote](#) | [Shepardize: Restrict By Headnote](#)

[Family Law > Child Custody > Enforcement > General Overview](#)

**HN10** There is a growing trend in the law easing restrictions on the custodial parent's right to relocate with the children and recognizing the identity of interest of the custodial parent and child. [More Like This Headnote](#) | [Shepardize: Restrict By Headnote](#)

[Family Law > Child Custody > Enforcement > General Overview](#)

**HN11** See N.J. Stat. Ann. § 9:2-2. [Shepardize: Restrict By Headnote](#)

[Family Law > Child Custody > Enforcement > General Overview](#)

[Family Law > Child Custody > Visitation > General Overview](#)

[Family Law > Parental Duties & Rights > General Overview](#)

**HN12** The purpose underlying N.J. Stat. Ann. § 9:2-2 is to preserve the rights of the noncustodial parent and the child to maintain and develop their familial relationship. This mutual right of the child and the noncustodial parent to develop and maintain their familial relationship is usually achieved by means of visitation between them. Because the removal of the child from the state may seriously affect the visitation rights of the noncustodial parent, the statute requires the custodial parent to show cause why the move should be permitted. [More Like This Headnote](#) | [Shepardize: Restrict By Headnote](#)


[Family Law > Child Custody > Enforcement > General Overview](#)

[Family Law > Marital Termination & Spousal Support > General Overview](#)


[Family Law > Parental Duties & Rights > General Overview](#)

**HN13** The family unity which is lost as a consequence of the divorce is lost irrevocably, and there is no point in judicial insistence on maintaining a wholly unrealistic simulation of unity. The realities of the situation after divorce compel the realization that the child's quality of life and style of life are provided by the custodial parent. That the interests of the child are closely interwoven with those of the custodial parent is consistent with psychological studies of


children of divorced or separated parents. The custodial parent who bears the burden and responsibility for the child is entitled, to the greatest possible extent, to the same freedom to seek a better life for herself or himself and the children as enjoyed by the noncustodial parent. [More Like This Headnote](#) | [Shepardize: Restrict By Headnote](#)


[Family Law](#) > [Child Custody](#) > [Enforcement](#) > [General Overview](#) 


[Family Law](#) > [Child Custody](#) > [Visitation](#) > [Awards](#) > [Standards](#) > [Best Interests of Child](#) 

[Family Law](#) > [Parental Duties & Rights](#) > [General Overview](#) 


**HN14** ⚡ A custodial parent may move with the children of the marriage to another state as long as the move does not interfere with the best interests of the children or the visitation rights of the noncustodial parent. More particularly, any sincere, good-faith reason will suffice, and a custodial parent need not establish a real advantage from the move. Motives are relevant, but if the custodial parent is acting in good faith and not to frustrate the noncustodial parent's visitation rights, that should suffice. Maintenance of a reasonable visitation schedule by the noncustodial parent remains a critical concern, but in our mobile society, it may be possible to honor that schedule and still recognize the right of a custodial parent to move. In resolving the tension between a custodial parent's right to move and a noncustodial parent's visitation rights, the beacon remains the best interests of the children. [More Like This Headnote](#) | [Shepardize: Restrict By Headnote](#)

[Family Law](#) > [Child Custody](#) > [Enforcement](#) > [General Overview](#) 

[Family Law](#) > [Child Custody](#) > [Visitation](#) > [Modification](#) > [General Overview](#) 


[Family Law](#) > [Child Support](#) > [Obligations](#) > [Modification](#) > [Best Interests of Child](#) 

**HN15** ⚡ Removal should not be denied solely to maintain the same visitation schedule where a reasonable alternative visitation scheme is available and there are good faith reasons for the move. Under Holder it is not any effect on visitation, but an adverse effect that is pivotal. An adverse effect is not a mere change or even a lessening of visitation; it is a change in visitation that will not allow the noncustodial parent to maintain his or her relationship with the child. Such a change implicates what Holder describes as a best interest analysis, although not the classic one: The emphasis should be not on whether the children or the custodial parent will benefit from the move, but on whether the children will suffer from it. Implicit in that aspect of Holder is the notion that a visitation schedule that will not maintain the relationship of the noncustodial parent and the child would cause the child to suffer. [More Like This Headnote](#) | [Shepardize: Restrict By Headnote](#)


[Family Law](#) > [Child Custody](#) > [Awards](#) > [General Overview](#) 


**HN16** ⚡ A removal case is entirely different from an initial custody determination. When initial custody is decided, either by judicial ruling or by settlement, the ultimate judgment is squarely dependent on what is in the child's best interests. N.J. Stat. Ann. § 9:2-4. Whoever can better advance the child's interests will be awarded the status of custodial parent. [More Like This Headnote](#) | [Shepardize: Restrict By Headnote](#)


[Family Law](#) > [Child Custody](#) > [Enforcement](#) > [General Overview](#) 

[Family Law](#) > [Child Custody](#) > [Visitation](#) > [General Overview](#) 


**HN17** ⚡ Removal is quite different from an initial custody determination. In a removal case, the parents' interests take on importance. However, although the parties often do not seem to realize it, the conflict in a removal case is not purely between the parents' needs and desires. Rather, it is a conflict based on the extent to which those needs and desires can be viewed as intertwined with the child's interests. Special respect is to be accorded to the liberty interests of the custodial parent to seek happiness and fulfillment because that parent's happiness and fulfillment enure to the child's benefit in the new family unit. At the same time those cases underscore the importance of the child's relationship with the noncustodial parent and require a visitation schedule sufficient to support and nurture that relationship. The critical path to a removal disposition therefore is not necessarily the one that satisfies one parent or even splits the difference between the parents, but the one that will not cause detriment to the child. [More Like This Headnote](#) | [Shepardize: Restrict By Headnote](#)

[Contracts Law](#) > [Formation](#) > [Capacity of Parties](#) > [Age](#) 


[Family Law](#) > [Child Custody](#) > [Enforcement](#) > [General Overview](#) 


[Family Law](#) > [Parental Duties & Rights](#) > [General Overview](#) 


**HN18** ⚡ The Cooper/Holder scheme is entirely inapplicable to a case in which the noncustodial parent shares physical custody either de facto or de jure or exercises the bulk of custodial responsibilities due to the incapacity of the custodial parent or by formal or informal agreement. In those circumstances, the removal application effectively constitutes a motion for a change in custody and will be governed initially by a changed circumstances inquiry and ultimately by a simple best interests analysis. Obviously then, the preliminary question in any case in which a parent seeks to relocate with a child is whether it is a removal case or whether by virtue of the arrangement between the parties, it is actually a motion for a change in custody. [More Like This Headnote](#) | [Shepardize: Restrict By Headnote](#)


[Family Law](#) > [Child Custody](#) > [Enforcement](#) > [General Overview](#) 


**HN19** ⚡ The Supreme Court of New Jersey, in assessing whether to order removal, has said the court should look to 12 factors relevant to the plaintiff's burden of proving good faith and that the move will not be inimical to the child's interest. The first six are as follows: (1) the reasons given for the move, (2) the reasons given for the opposition, (3) the past history of dealings between the parties insofar as it bears on the reasons advanced by both parties for supporting and opposing the move, (4) whether the child will receive educational, health and leisure opportunities at least equal to what is available here, (5) any special needs or talents of the child that require accommodation and whether such accommodation or its equivalent is available in the new location, and (6) whether a visitation and communication schedule can be developed that will allow the noncustodial parent to maintain a full and continuous relationship with the child. [More Like This Headnote](#) | [Shepardize: Restrict By Headnote](#)


[Family Law > Child Custody > Enforcement > General Overview](#) 


**HN20**  The Supreme Court of New Jersey, in assessing whether to order removal, has said the court should look to 12 factors relevant to the plaintiff's burden of proving good faith and that the move will not be inimical to the child's interest. The second six are as follows: (7) the likelihood that the custodial parent will continue to foster the child's relationship with the noncustodial parent if the move is allowed, (8) the effect of the move on extended family relationships here and in the new location, (9) if the child is of age, his or her preference, (10) whether the child is entering his or her senior year in high school at which point he or she should generally not be moved until graduation without his or her consent, (11) whether the noncustodial parent has the ability to relocate, and (12) any other factor bearing on the child's interest. [More Like This Headnote](#) | [Shepardize: Restrict By Headnote](#)


[Evidence > Relevance > General Overview](#) 


[Family Law > Child Custody > Enforcement > General Overview](#) 


[Family Law > Child Custody > Visitation > Modification > General Overview](#) 


**HN21**  The Supreme Court of New Jersey, in assessing whether to order removal, has said the court should look to 12 factors relevant to the plaintiff's burden of proving good faith and that the move will not be inimical to the child's interest. Obviously not all factors will be relevant and of equal weight in every case. It is likely that the main objection that will be lodged by the majority of noncustodial parents will be the change in the visitation structure thus, that will be the primary factor for consideration in most cases. Again, a mere change, even a reduction, in the noncustodial parent's visitation is not an independent basis on which to deny removal. It is one important consideration relevant to the question of whether a child's interest will be impaired, although not the only one. It is not the alteration in the visitation schedule that is the focus of the inquiry. Indeed, alterations in the visitation scheme when one party moves are inevitable and acceptable. [More Like This Headnote](#) | [Shepardize: Restrict By Headnote](#)


[Family Law > Child Custody > Enforcement > General Overview](#) 


[Family Law > Child Custody > Visitation > General Overview](#) 


**HN22**  The mutual efforts to develop an alternative visitation scheme that can bridge the physical divide between the noncustodial parent and the child are important. By mutual is meant that the noncustodial parent is not free to reject every scheme offered by the custodial parent without advancing other suggestions. Innovative technology should be considered where applicable, along with traditional visitation initiatives. In many cases, vacations, holidays, school breaks, daily phone calls, and E-mail, for example, may sustain a parent-child relationship as well as alternate weekends. No set scheme can ever guarantee a relationship. What is necessary is that communication and visitation is extensive enough to maintain and nurture the connection between the noncustodial parent and the child. [More Like This Headnote](#)


[Evidence > Procedural Considerations > Burdens of Proof > Ultimate Burden of Persuasion](#) 


[Family Law > Child Custody > Enforcement > General Overview](#) 


**HN23**  The template for a removal case becomes clearer. Under Cooper and Holder, the moving party ultimately bears a two-pronged burden of proving a good faith reason for the move and that the child will not suffer from it. In terms of the burden of going forward, the party seeking to move, who has had an opportunity to contemplate the issues, should initially produce evidence to establish prima facie that (1) there is a good faith reason for the move and (2) that the move will not be inimical to the child's interests. Included within that prima facie case should be a visitation proposal. By prima facie is meant evidence that, if unrebutted, would sustain a judgment in the proponent's favor. [More Like This Headnote](#) | [Shepardize: Restrict By Headnote](#)


[Family Law > Child Custody > Enforcement > General Overview](#) 


[Family Law > Child Custody > Visitation > General Overview](#) 

[Family Law > Parental Duties & Rights > Duties > General Overview](#) 


**HN24**  The initial burden of the moving party is not a particularly onerous one. It will be met, for example, by a custodial parent who shows that he is seeking to move closer to a large extended family that can help him raise his child; that the child will have educational, health and leisure opportunities at least equal to that which is available here, and that he has thought out a visitation schedule that will allow the child to maintain his or her relationship with the noncustodial parent. If, for some reason, the custodial parent fails to produce evidence on the issues to which we have referred, the noncustodial parent will have no duty to go forward and a judgment denying removal should be entered. [More Like This Headnote](#) | [Shepardize: Restrict By Headnote](#)


[Family Law > Child Custody > Enforcement > General Overview](#) 

[Family Law > Child Custody > Visitation > General Overview](#) 

**HN25**  Once that prima facie case has been adduced, however, the burden of going forward devolves upon the noncustodial parent who must produce evidence opposing the move as either not in good faith or inimical to the child's interest. She might, for example, challenge the move as pretextual and show that the custodial parent's past actions reveal a desire to stymie her relationship with the child, thus bearing on good faith. She might also offer proof that the move will take the child away from a large extended family that is a mainstay in the child's life. Alternatively, she could adduce evidence that educational, avocational or health care available in the new location are inadequate for the child's particular needs. She might also proffer evidence that because of her work schedule, neither relocation nor reasonable visitation is possible, and that those circumstances will cause the child to suffer. [More Like This Headnote](#) | [Shepardize: Restrict By Headnote](#)

[Family Law > Child Custody > Enforcement > General Overview](#) 

[Family Law > Child Custody > Visitation > Modification > General Overview](#) 

**HN26**  Where visitation is the issue, in order to defeat the custodial parent's proofs, the burden is on the noncustodial parent to produce evidence, not just that the visitation will change, but that the change will negatively affect the child. Indeed, there are powerful visitation related issues that can defeat a removal

application. [More Like This Headnote](#) | [Shepardize: Restrict By Headnote](#)

[Family Law](#) > [Child Custody](#) > [Enforcement](#) > [General Overview](#)

[Family Law](#) > [Child Custody](#) > [Visitation](#) > [General Overview](#)

**HN27** Although children are generally resilient and can adapt to removal so long as their relationship with the noncustodial parent is fully sustained through a new visitation scheme, the noncustodial parent remains free to adduce evidence that for particular reasons, and in light of the unique facts surrounding his or her relationship with the child, such a conclusion should not be drawn. The possible evidential proffers in a case like this are as varied as human nature itself. A noncustodial parent who is lackadaisical or sporadic in his or her visitation ordinarily will be unable to prevail in a removal case. That is not by way of retaliation for past inadequacies but because he or she will not be able to show that particularized harm will occur from removal. [More Like This Headnote](#) | [Shepardize: Restrict By Headnote](#)

[Family Law](#) > [Child Custody](#) > [Enforcement](#) > [General Overview](#)

[Family Law](#) > [Child Custody](#) > [Visitation](#) > [General Overview](#)

**HN28** After the noncustodial parent has gone forward, the moving party may rest or adduce additional evidence regarding the noncustodial parent's motives, the visitation scheme or any other matter bearing on the application. The trial court must then apply the burden of proof and the standards. [More Like This Headnote](#) | [Shepardize: Restrict By Headnote](#)

[Education Law](#) > [Students](#) > [Right to Education](#)

**HN29** Under the Individuals with Disabilities Education Act, 20 U.S.C.S. § 1400, handicapped children are entitled to a free and appropriate education. New Jersey has complied with this mandate, N.J. Stat. Ann. § 18A:46-19.1, as has Wisconsin, Wis. Stat. § 115.81. [More Like This Headnote](#)

[Family Law](#) > [Child Custody](#) > [Enforcement](#) > [General Overview](#)

[Family Law](#) > [Child Custody](#) > [Visitation](#) > [Awards](#) > [Standards](#) > [General Overview](#)

**HN30** In a removal case, the burden is on the custodial parent, who seeks to relocate, to prove two things: a good faith motive and that the move will not be inimical to the interests of the child. Visitation is not an independent prong of the standard, but an important element of proof on the ultimate issue of whether the child's interest will suffer from the move. [More Like This Headnote](#) | [Shepardize: Restrict By Headnote](#)

## HEADNOTES / SYLLABUS

 **Hide**

## SYLLABUS

(This syllabus is not part of the opinion of the Court. It has been prepared by the Office of the Clerk for the convenience of the reader. It has been neither reviewed nor approved by the Supreme Court. Please note that, in the interests of brevity, portions of any opinion may not have been summarized).

**Carita L. Baures v. Steven R. Lewis (A-135-99)**

**Argued January 17, 2001 -- Decided April 23, 2001**

**LONG, J., writing for a unanimous Court.**

In this appeal, the Court clarifies the legal standards that should apply in addressing a removal application, and what role visitation plays in that determination.

On October 5, 1985, in Rothschild, Wisconsin, Carita **Baures**, a native of Wisconsin, married Steven **Lewis**, a native of Iowa and an officer in the United States Navy. Their only child, Jeremy, was born in 1990. In 1994, the couple moved to New Jersey when **Lewis** was stationed in Leonardo.

At age four, Jeremy was diagnosed with Pervasive Developmental Disorder (PDD), [\*\*\*2] a form of autism. Over the next few years, an effective therapeutic and educational program was created for Jeremy through a combination of public school and the Douglass College Outreach Program.

**Baures** and **Lewis** planned to move near **Baures'** parents in Wisconsin after **Lewis'** discharge from the Navy. **Baures'** parents were retired school teachers and offered to help care for Jeremy while **Baures** and **Lewis** worked. In anticipation of that move, **Baures'** parents moved to Galesville, Wisconsin because Galesville was a short distance from the Chileda Institute (Chileda), a program for autistic children.

In 1996, **Baures** filed for divorce. A consent order was entered, providing for custody and visitation and restraining either parent from leaving the State with Jeremy. In June 1996, **Baures'** parents came to live in New Jersey to help care for Jeremy and remained for over a year. During that time, **Baures'** father transported Jeremy to and from his programming and provided additional child care. **Baures'** parents also contributed money each month to supplement **Lewis'** court ordered child support.

In April 1997, **Baures** filed an amended complaint for divorce requesting permission to relocate [\*\*\*3] to Wisconsin. At trial, **Baures** testified that the parties had limited funds and could no longer afford to live in New Jersey without the help of her parents. Without a car, she could not take Jeremy to his special programming or to his doctors. Moreover, Jeremy's special

needs precluded regular day care. **Baures** testified that in Wisconsin, her parents could provide childcare and a place to live so that she could work. Although **Baures** testified that Chileda offered outreach programming similar to the Douglass Program, she failed to provide information about available services in the Wisconsin public schools. **Baures** noted that the relationship between **Lewis** and Jeremy was important and to encourage it, she proposed that **Lewis** visit Jeremy one week a month and stay free of charge in her parents' basement. She also agreed to pay a portion of **Lewis'** transportation costs.

**Lewis** testified that there were no jobs in Galesville and that he would not be permitted to travel to Wisconsin one week each month to visit Jeremy. He claimed that Jeremy would regress if he is separated from his father for an extended period of time.

The trial court denied the removal request, finding the move [\*\*\*4] would not be in the "best interests" of Jeremy because of the adverse affect the move would have on **Lewis'** visitation. The court acknowledged that **Baures** sought removal in good faith but that she had failed to provide sufficient evidence of comparable educational opportunities for Jeremy in Wisconsin. **Baures** moved for reconsideration, which was denied by the trial court following a "best interests" analysis.

**Lewis** was discharged from the Navy in July of 1998. He found a full-time job in Edison as an electronics technician and a part-time job as a quality assurance tester. Because of **Lewis'** discharge, **Baures** requested and was granted a *Rampolla* hearing on the issue of whether **Lewis** could relocate to Wisconsin. At that hearing, **Lewis** testified that he investigated job opportunities in Wisconsin but had no success. He did acknowledge on cross-examination that his entire job search consisted of looking at classified ads on the Internet. The trial court affirmed its denial of **Baures'** motion, finding that **Baures** failed to prove the "prospective advantages" of the move; that Jeremy is doing well in New Jersey; that the proximity of both parents is important to a special needs child; [\*\*\*5] and that there was insufficient evidence demonstrating **Lewis'** ability to obtain a job in Wisconsin at a location near Jeremy. Most importantly, the trial court relied on **Baures'** failure to provide adequate evidence of the comparability of educational and therapeutic facilities available to Jeremy in Wisconsin.

The Appellate Division affirmed the ruling of the trial court and the Supreme Court granted certification.

**HELD:** In a removal case, the burden is on the custodial parent who seeks to relocate to prove: 1) a good faith motive; and 2) that the move will not be inimical to the best interest of the child. Visitation is not an independent prong of the standard, but an important element of proof on the ultimate issue of whether the child's interest will suffer from the move.

1. Courts have significantly eased the burden on custodial parents in removal cases, for reasons including: increased geographical mobility and post-divorce demands; advances in technology that make communication over long distances much easier; social science research linking a positive outcome for children of divorce with the welfare of the custodial parent and the stability of and happiness [\*\*\*6] within the newly formed household; and research suggesting that so long as a child has regular communication with the noncustodial parent that is extensive enough to sustain the relationship, the child's interests are served. (Pp. 14-21)

2. Under New Jersey's removal statute, the custodial parent may remove a child from the jurisdiction with the consent of the noncustodial parent or by making a successful removal application to the court. In *Cooper v. Cooper*, the Court recognized the fundamental tension that exists in a removal case: the interests of the custodial parent in self-governance versus the interests of the noncustodial parent in maintaining a relationship with the child. The Court held that the custodial parent must show that there is a real advantage to that parent in the move and that the move is not inimical to the best interest of the child. Four years later, in *Holder v. Polanski*, the Court held that the real advantage test was too great a burden and that *Cooper* had failed in its intent to allow custodial parents the same freedom enjoyed by noncustodial parents to seek a better life. Under *Holder*, removal should not be denied solely to maintain [\*\*\*7] the same visitation scheme where a reasonable alternative visitation schedule is available and there are good faith reasons for the move. Current decisions applying *Holder* demonstrate confusion regarding the burden of going forward, the ultimate burden of proof, and the elements of the burden in determining whether the move would be inimical to the best interest of the child. (Pp. 21-31)

4. In making a removal determination, the court should assess the following factors: 1) reasons for the move; 2) reasons for the opposition; 3) past history of dealings between the parties as bears on the reasons for and against the move; 4) whether the child will receive comparable educational, health, and leisure opportunities; 5) any special needs or talents of the child that require accommodation and whether such accommodation is available in the new location; 6) whether a visitation and communication schedule can be developed that will allow the noncustodial parent to maintain a full and continuous relationship with the child; 7) the likelihood that the custodial parent will continue to foster the relationship of the child with the noncustodial parent; 8) the effect of the move on extended [\*\*\*8] family relationships; 9) if the child is of age, his or her preference; 10) whether the child is entering senior year in high school; 11) whether the noncustodial parent has the ability to relocate; and 12) any other factor bearing on the child's interest. Not all factors will be relevant or equally weighted. (Pp. 31-35)

5. The moving party bears the burden of proving a good faith reason for the move and that the child will not suffer for it. In terms of the burden of going forward, the party seeking to move should initially produce evidence to establish *prima facie* that 1) there is a good faith reason for the move and 2) that the move will not be inimical to the child's interests. Included in that showing should be a visitation proposal. Thereafter, the burden of going forward moves to the noncustodial parent to produce evidence opposing the move as being either not in good faith or inimical to the child's interest. Where visitation is concerned, the burden is on the noncustodial parent to produce evidence that the change will negatively affect the child. (Pp. 35-39)

6. Clearly, **Baures** met the burden of establishing a good faith reason for the move but fell short in [\*\*\*9] adducing sufficient evidence of the compatibility of the Wisconsin special education program with the New Jersey program. If she can provide such proof, then **Lewis** may produce evidence about the harm that would occur to Jeremy if removal were allowed. The evidence adduced at the *Rampolla* hearing was inadequate to sustain **Lewis'** position that he could not obtain a job in Wisconsin. He also failed to produce evidence of any strong ties to New Jersey. Moreover, there should be an inquiry into **Baures'** parents ability and willingness to relocate. (Pp. 39-43)

**Judgment of the Appellate Division is REVERSED and the matter is REMANDED to the Law Division for proceedings consistent with this opinion.**

**CHIEF JUSTICE PORITZ and JUSTICES STEIN, COLEMAN, VERNIERO, LAVECCHIA and ZAZZALI join in JUSTICE LONG'S opinion.**

**COUNSEL:** Veronica M. Davis, argued the cause for appellant, (*Lomurro, Davison, Eastman & Munoz*, attorneys; Cheryl K. Brunner, on the brief).

Barbara L. Birdsall, argued the cause for respondent, (*Stout & O'Hagan*, attorneys).

**JUDGES:** The opinion of the court was delivered by LONG, J. Chief Justice PORITZ and Justices STEIN, COLEMAN, LONG, VERNIERO, LAVECCHIA and ZAZZALI.

**OPINION BY: LONG****OPINION**

[\*96] [\*\*217] The opinion of the court was delivered by

LONG, J.

Ideally, after a divorce, parents cooperate and remain in close proximity to each other to provide access and succor to their children. But that ideal is not always the reality. In our global economy, relocation for employment purposes is common. On a personal level, people remarry and move away. <sup>HN1</sup> Noncustodial parents may relocate to pursue other interests regardless of the strength of the bond they have developed with their children. [\*97] Custodial parents may do so only with the consent of the former spouse. Otherwise, a court application is required.

Inevitably, upon objection by a noncustodial parent, there is a clash between the custodial parent's interest in self-determination and the noncustodial parent's interest in the companionship of the child. There is rarely an easy answer or even an entirely satisfactory one when a noncustodial parent objects. If the removal is denied, the custodial parent may be embittered by the assault on his or her autonomy. If it is granted, the noncustodial parent may live with the abiding belief that his or her connection to the child has been [\*\*\*11] lost forever.

Courts throughout the country, grappling with the issue of relocation, have not developed a uniform approach. Ann M. Driscoll, Note, *In Search of a Standard: Resolving the Relocation Problem in New York*, 26 Hofstra L. Rev. 175, 176 (1997). Some use a presumption against removal as their point of departure; others use a presumption in favor of removal; still others presume nothing, but rely on a classic best-interests analysis. *Id.* at 178.

<sup>HN2</sup> We have struggled to accommodate the interests of parents and children in a removal situation in our prior cases. *Holder v. Polanski*, 111 N.J. 344, 544 A.2d 852 (1988); *Cooper v. Cooper*, 99 N.J. 42, 491 A.2d 606 (1984). In so doing, we have developed something of a hybrid scheme. Although it is not based upon a presumption in favor of the custodial parent, it does recognize the identity of the interests of the custodial parent and the child, and, as a result, accords particular respect to the custodial parent's right to seek happiness and fulfillment. At the same time, it emphasizes the importance of the noncustodial parent's relationship with the child by guaranteeing [\*\*\*12] regular communication and contact of a nature and quality to sustain that relationship. Further, it incorporates a variation on a best interests analysis by requiring proof that the child will not suffer from the move.

We revisit the issue in this appeal, not only to resolve the matter before us, but because of what we perceive as confusion among the bench, Bar, and litigants over the legal standards that [\*98] should apply in addressing a removal application, and particularly over what role visitation plays in the calculus.

I

Carita Baures (Baures), a native of Wisconsin married Steven Lewis (Lewis), a native of Iowa and an officer in the United [\*\*218] States Navy, on October 5, 1985, in Rothschild, Wisconsin. Their only child, Jeremy, was born on June 24, 1990. During the marriage, the couple lived in the various locations in which the Navy billeted them. In 1994, they moved to New Jersey when Lewis was stationed in Leonardo.

At age two, Jeremy began to exhibit developmental difficulties. By 1994, Jeremy, then aged four, was diagnosed with Pervasive Developmental Disorder (PDD), a form of autism. <sup>\*</sup> Over the next few years, through trial and error, the parents arranged an effective [\*\*\*13] therapeutic and educational regimen for Jeremy through a combination of public school and the Douglass College Outreach Program.

**FOOTNOTES**

<sup>1</sup> PDD is a lifelong disability and patients suffering from this disorder have difficulty with language and social communication. *The American Heritage Stedman's Medical Dictionary* 627 (1995). A cause has not been identified, but current research suggests that autism is caused by a biochemical or neurological disorder of the brain. Jeremy exhibits the following characteristics of autism: speech problems; repetition of what he hears; little interest in playing with others; no interest in being cuddled or touched; limited interest in activities; insistence on following strict routines; prone to tantrums.

In 1995, recognizing that their financial resources were being taxed to the limit, Baures and Lewis discussed moving to Wisconsin. Baures' parents live in Wisconsin and are retired school teachers who offered to help care for Jeremy while Baures and Lewis worked. According to both [\*\*\*14] parties, the couple planned to move to Wisconsin after Lewis was discharged

from the Navy in 1998. In anticipation of the discharge, **Baures'** parents sold their home in Schofield, Wisconsin and moved to Galesville because, according to them, it was a short distance to the Chileda Institute **[\*99]** (Chileda), a Program for autistic children. **Lewis** flew to Wisconsin to research job opportunities.

In 1996, escalating marital discord brought the case to court. **Lewis** sought custody of Jeremy because he believed that **Baures** was going to remove the child to Wisconsin. One day before the hearing, **Baures** filed a complaint for divorce alleging extreme cruelty. In response to **Lewis's** application for custody, **Baures** denied that she had any intention of moving Jeremy out of New Jersey. The parties then entered into a consent order that provided for custody and visitation and restrained both parties from leaving New Jersey with Jeremy. **Baures** and **Lewis** separated in late 1996. In April 1997, **Baures** filed an amended complaint for divorce requesting permission to relocate to Wisconsin. A three-day trial was held to resolve the issue.

At trial, **Baures** claimed that she should be allowed to relocate to Wisconsin **[\*\*\*15]** because the parties had limited funds and could no longer afford to live in New Jersey without the help of her parents. Without a vehicle (**Lewis** had taken the family car), **Baures** had no way to get Jeremy to his special programming or to his doctors. Moreover, because Jeremy is a child with special needs, he could not be admitted to regular day care. **Baures** testified that in Wisconsin, her parents would be able to provide child care and shelter for her and Jeremy so that she could work.

Although **Baures** holds a master's degree in human resources management that she obtained in 1989, she never worked in that field and has held only part-time cleaning and baby-sitting jobs since Jeremy was born. She attempted to find more suitable employment but, of the twenty-four jobs in her field that she researched, **Baures** testified that none was able to provide child care for Jeremy because of his special needs.

**[\*\*219]** In June of 1996, **Baures'** parents came to New Jersey to help her care for Jeremy and remained for over a year after **Lewis** took **Baures'** name off the checkbook, credit cards and savings account, and denied her the use of the automobile. In that time, **Baures'** father transported Jeremy to and **[\*\*\*16]** from his programming, **[\*100]** and provided additional child care. In total, **Baures'** parents paid her in excess of one-thousand dollars per month to supplement the court ordered child support she received in the amount of one-hundred dollars per week.

**Baures** testified that the Chileda Institute offers outreach programming to children who have been diagnosed with autism or PDD. The program is similar to the Douglas Program in that it provides trained professional therapy for the child at home. Chileda is located within twenty minutes of **Baures'** parents' house. **Baures** inquired whether Jeremy would be eligible for services at Chileda and faxed the school Jeremy's diagnostic materials and other documentation. A representative of Chileda responded that, based on the materials she had received, Jeremy would be eligible. She could not, however, say specifically what programming would be provided until there was an accurate assessment of Jeremy to determine what approach should be incorporated into the home program. **Baures** conceded that, although her father visited Chileda, she never did so, and that what she knew about the program was elicited from telephone calls, literature, and her father's visit. **[\*\*\*17]** **Baures** offered no information regarding what services are available in the Wisconsin public schools.

**Baures** acknowledged that **Lewis** should have ongoing contact with Jeremy. To encourage the relationship, she stated that **Lewis** could visit Jeremy one week a month and stay in her parents' basement free of charge. That offer was reiterated by **Baures'** father. In addition, **Baures** agreed to pay half of the transportation costs from New Jersey to Wisconsin if **Lewis** could obtain an economical rate.

On cross-examination, **Baures** testified that **Lewis** was a good father to Jeremy, and that his presence in Jeremy's life is important to the child's progress. Moreover, she acknowledged that in the initial action instituted by **Lewis** to prevent her from moving to Wisconsin, she had stated that if Jeremy was to leave the State of New Jersey, he would lose his relationship with his father and would be prevented from attending the Douglass **[\*101]** Program, the best available program, both of which would adversely affect his progress.

Joan Hurst, a coordinator at the Douglass Program, testified at trial on **Baures'** behalf. Hurst was offered and accepted as an expert in the field of autism and PDD. Hurst explained **[\*\*\*18]** that a child with autism needs a highly structured, full-day program beyond normal school hours that teaches and applies behavior modification techniques throughout the day. Hurst explained that a strong family support system is important because:

[i]t's really the basis of the child's program. The school and the professionals can lay the foundation and show the family what to do, but it needs follow through in all areas of their lives. And since home is really the most common place for them and in their security and where they are most of the time, everything needs to continue when they come home from school. And it needs to continue to go on with the family at home.

When asked what a family member might have to do to continue home programming, Hurst went on:

every minute is a teaching minute . . . especially with Jeremy having the diagnosis of autism, since language is such an issue, there should be constant modeling **[\*\*220]** of language. There should be constant modeling of appropriate reactions to situations. . . . There should be constant teaching on how to successfully complete daily activities of the day. And constant teaching and modeling and prompting of what is normal and **[\*\*\*19]** acceptable to society of things that we go through each day.

Hurst made several recommendations with respect to Jeremy that include the following: that any program for Jeremy must be highly structured and staffed by professionals experienced in the field of autism; have a low student/teacher ratio; provide appropriate peer models; operate on a twelve month basis; support the family; offer a trained professional to assist Jeremy as a shadow, <sup>2</sup> and provide speech therapy sessions as needed. She did not render an opinion regarding whether the Wisconsin



public schools and Chileda could provide those services.

#### FOOTNOTES

<sup>2</sup> A "shadow" is a trained worker that follows the child around the classroom and encourages appropriate activities and responses. Hurst was one of Jeremy's shadows from February 1997 to the end of the school year.

[\*102] At the time of the hearing, **Lewis**, who holds a bachelor's degree in economics, was employed in the United States Navy, and had been for over nineteen years. His rank was that of a chief petty [\*\*\*20] officer, electronics technician. He indicated that his ultimate career goal is to be an electrical engineer, but that he will be required to take further courses. Further, he claimed, based on advertisements in the newspaper and talking with people in the area, Galesville, Wisconsin offered no jobs. He stated that he has no property or family in Wisconsin, however, his mother lives in Minnesota, about a five-hour distance from Wisconsin. At the time of the hearing, his visitation schedule was two afternoons a week from 4:30 p.m. until 7:30 p.m. and alternate weekends.

**Lewis** testified that his command would not let him travel to Wisconsin one week a month to visit his son. Regardless, he stressed that he could not visit at the **Baures's** house due to the estranged relationship with their daughter. **Lewis** stated that Jeremy will regress if he is separated from him for an extended period of time.

The trial court denied the removal. Although acknowledging that **Baures** had a good faith reason to move (financial and emotional stability and caregiving by her parents), the court held that the move would adversely affect **Lewis's** visitation with Jeremy; that **Lewis** could not visit [\*\*\*21] regularly or relocate because of his Navy service; and that he does not have the financial resources to travel back and forth to Wisconsin. Further, the court held that **Baures** had not provided sufficient evidence that the educational opportunities for Jeremy in Wisconsin are comparable to that which he was receiving in New Jersey. Accordingly, the court held it was not in Jeremy's "best interests" to move to Wisconsin.

After being denied permission to remove Jeremy from New Jersey, **Baures** moved for reconsideration. The court entered a Judgment of Divorce in February 1998, and ordered a "best interests" evaluation by Dr. Amy Altenhaus. Although there was no issue as to custody, Dr. Altenhaus stated her opinion that it was in Jeremy's best interest that his mother continue as the [\*103] primary custodial parent. However, Altenhaus found that **Baures** and **Lewis** complemented each other's parenting styles. For example, Altenhaus observed that **Baures** attends to the everyday details of Jeremy's life, and is caring and supportive. In contrast, she found that [\*\*\*221] **Lewis** wanted desperately for Jeremy to be "normal" and seemed "motivated to do whatever he can to help this boy be 'normal.'" Furthermore,

[w]hile [\*\*\*22] [Mr. **Lewis**] may need to have a more realistic picture of what is possible for Jeremy, nonetheless his style with Jeremy is certainly important as well. Mr. **Lewis** gives Jeremy more room to explore and to do rough and tumble play. Mr. **Lewis** will take him places and let him explore more on his own without some of the structure that Ms. **Baures** imposes. While this structure is very important for Jeremy's acquisition of skills, it is also important that children like this have a chance to explore their environment in a less structured manner as well . . . Jeremy clearly loves and enjoys being with both of his parents.

She stated that a move to Wisconsin "does not seem" to be in Jeremy's interest because Jeremy was doing well in East Brunswick, and because he would be unable to sustain a long distance relationship with his father who could not relocate because of his Navy commitments. Reconsideration was denied.

**Lewis** was discharged from the Navy on July 31, 1998. He found a full-time job in Edison as an electronics technician at a starting salary of \$ 26,500, and a part-time job as a quality assurance tester for \$ 9 an hour. As a result of **Lewis's** discharge, **Baures** requested the [\*\*\*23] trial court to conduct a hearing on the issue of whether **Lewis** could relocate to Wisconsin pursuant to the requirements of *Rampolla v. Rampolla*, 269 N.J. Super. 300, 307-08, 635 A.2d 539 (App.Div.1993). <sup>HN3</sup> *Rampolla* holds that in a removal case, the court should inquire about the capacity of the noncustodial parent to relocate as a method of ensuring the vitality of a shared custody arrangement. *Id.* at 307, 635 A.2d 539. **Lewis** testified that he had investigated job opportunities in Wisconsin, but had no success. He said that the jobs that were available in Galesville, a very small town, were not in his area of expertise and were low paying. He identified only two jobs that were commensurate with his skill level, but claimed that they were located in Milwaukee, a six-hour drive from Galesville. **Lewis** said [\*104] that he had considered working at IBM, located in nearby Rochester, Minnesota, but that he did not have the necessary digital electronics background or computer skills.

To counter **Lewis's** arguments, **Baures** offered the testimony of Arnold Gelfman, an employability and vocational expert from the Career Choice Institute of New Jersey. Gelfman testified in detail, [\*\*\*24] concluding that **Lewis** had significant job opportunities as an electronics technician in Wisconsin and Minnesota at comparable or higher wages than in New Jersey and that the availability of such employment would increase at greater rates between 1994 and 2005 in Wisconsin and Minnesota than in New Jersey.

**Lewis** down played those statistics and said that they did not provide information about exactly where in Wisconsin and Minnesota those jobs could be found; did not identify any particular employer or industry in either state that had an immediate need for electronics' technicians; did not consider the fact that his expertise is limited to analog electronics; and did not recognize that not all electronics' technicians have the same skills. On cross-examination, **Lewis** acknowledged that his entire job search consisted of looking at classified ads on the Internet and that he never sent a letter or made a phone call to any potential employer in Wisconsin or went to that state to seek employment.

Based on the *Rampolla* hearing, and the testimony from the 1997 trial, the trial [\*\*\*222] court affirmed its denial of **Baures's** motion. In so doing, the court stated that **Baures** was required to prove [\*\*\*25] "the prospective advantages" of the move and that she had failed to do so. The court reaffirmed the conclusion that **Baures's** motion was made in good faith but noted

that Jeremy is doing well in New Jersey; that the proximity of both parents is important to a special needs' child; and that there was insufficient evidence adduced to show that **Lewis** could obtain employment in Wisconsin at a location near Jeremy. Most importantly, in denying removal, the court relied on the fact that **Baures** did not provide adequate evidence of the comparability of educational and therapeutic facilities available to Jeremy in Wisconsin.

**[\*105]** The Appellate Division affirmed the ruling in an unpublished decision. We granted certification. *Baures v. Lewis*, 165 N.J. 488, 758 A.2d 648 (2000).

## II

Historically, courts throughout the country have disfavored removal of a child from the jurisdiction after divorce. Edwin J. Terry et al., *Relocation: Moving Forward or Moving Backward?*, 31 *Tex. Tech. L. Rev.* 983, 986 (2000). Some courts continue to adhere to that view and apply a presumption against removal based on the notion that it will necessarily destroy the relationship **[\*\*\*26]** between the noncustodial parent and the child. See *White v. White*, 437 Pa. Super. 446, 650 A.2d 110, 113 (1994) (requiring parent to demonstrate that move will significantly improve quality of life for parent and child before allowing removal); *McAlister v. Patterson*, 278 S.C. 481, 299 S.E.2d 322, 323 (1982) (announcing that presumption can be overcome only by showing relocation will benefit child).

Recently, however, many courts have reassessed the burden cast on custodial parents who desire to relocate with their children. Reasons for the change include the geographic mobility of the United States population and post-divorce demands. Chris Ford, *Untying the Relocation Knot: Recent Developments and a Model for Change*, 7 *Colum. J. Gender & L.* 1, 7 (1997). For example, within four years of separation and divorce about one-fourth of mothers with custody move to a new location. *Ibid.* In addition, one in five Americans overall changes his or her residence each year. *Ibid.*

That the ability to communicate over long distances has been revolutionized during the years since the first removal cases is also undeniable. **[\*\*\*27]** Kelly M. Slavitt, *Gabby in Wonderland-Through the Internet Looking Glass*, 80 *J. Pat. & Trademark Off. Soc'y* 611, 611-12 (1998). Computers, technology and competitive long-distance rates, among other things, essentially have changed the way people connect with each other when they are apart. *Ibid.*

**[\*106]** Most importantly, <sup>HN4</sup>social science research links a positive outcome for children of divorce with the welfare of the primary custodian and the stability and happiness within that newly formed post-divorce household. See Judith S. Wallerstein & Tony J. Tanke, *To Move or Not to Move: Psychological and Legal Considerations in the Relocation of Children Following Divorce*, 30 *Fam. L.Q.* 305, 311-12 (1996) (stating that psychological adjustment of custodial parent consistently has been found to be related to child's adjustment); Marsha Kline et al., *Children's Adjustment in Joint and Sole Custody Families*, 25 *Develop. Psych.* 430, 431 (1989) (noting that research indicates that factor associated with good outcomes for children in post-divorce families includes a close, sensitive relationship with a psychologically intact custodial parent). Justice Garibaldi touched **[\*\*\*28]** on that in *Cooper* sixteen years ago when she said:

**[\*\*223]** [T]he child's quality of life and style of life are provided by the custodial parent. That the interests of the child are closely interwoven with those of the custodial parent is consistent with psychological studies of children of divorced or separated parents. One researcher has concluded that [o]f all factors related to the child's way of coping with loss [of a parent because of divorce or death], the role of the home parent seemed most central. Some years after the divorce or death, the well-being of the child appeared closely related to the well-being of the [home] parent. [L. Tessman, *Children of Parting Parents* 516 (1978).]

Other investigators have found that there is an increased emotional dependence on the custodial parent after divorce and that children of all ages 'were in trouble' when the home parent-child relationship was affected by stress on the home-parent, such as 'loneliness and discouragement.' J. Wallerstein & J. Kelly, *Surviving the Breakup* 114, 224-225 (1980).

[*Cooper, supra*, 99 N.J. at 53-54, 491 A.2d 606.]

Since that time, social science research has uniformly confirmed the simple principle **[\*\*\*29]** that, in general, what is good for the custodial parent is good for the child.

To be sure, the <sup>HN5</sup>research also affirms the importance of a loving and supportive relationship between the noncustodial parent and the child. Frank F. Furstenberg & Andrew J. Cherlin, *Divided Families: What Happens to Children When Parents Part* 72 (1991); Michael E. Lamb, *Fathers and Child Development: An Integrative View of the Role of the Father in Child Development* **[\*107]** (rev. ed. 1981); Janet R. Johnson, *Children's Adjustment in Sole Compared to Joint Custody Families and Principles for Custody Decision Making*, 33 *Fam. & Conciliation Cts. Rev.* 415, 419 (1995); Marsha Kline et al., *Children's Adjustment in Joint and Sole Custody Families*, 25 *Develop. Psych.* 430, 431 (1989). What it does not confirm is that there is any connection between the duration and frequency of visits and the quality of the relationship of the child and the noncustodial parent. Wallerstein, *supra*, 30 *Fam. L.Q.* at 312 ("There is no evidence in Dr. Wallerstein's work of many years, including the ten and fifteen year longitudinal study, or in that of any other research, that frequency of visiting **[\*\*\*30]** or amount of time spent with the noncustodial parent over the child's entire growing-up years is significantly related to good outcome in the child or adolescent."); see also Frank F. Furstenberg & Andrew J. Cherlin, *Divided Families: What Happens to Children When Parents Part* 72 (1991) (noting no connection between frequency of noncustodial visits and good outcomes for child). Although confidence that he or she is loved and supported by both parents is crucial to the child's well-being after a divorce, no particular visitation configuration is necessary to foster that belief. *Ibid.* According to scholars, so long as the child has regular communication and contact with the noncustodial parent that is extensive enough to sustain their relationship, the child's interests are served. *Ibid.*; Judith S. Wallerstein et al., *The Unexpected Legacy of Divorce* 215 (2000). In short, a happy, productive, supportive custodial household along with a loving, sustaining relationship with the noncustodial parent are what is necessary to the adjustment of a child of divorce. Eleanor E. Maccoby & Robert H. Mnookin, *Dividing the Child: Social and Legal Dilemmas of Custody* (1992); E. **[\*\*\*31]** Mavis Hetherington et al. *Long-Term Effects of Divorce and Remarriage on the Adjustment of Children*, 24 *J. Amer. Acad. Child Psych.* 518, 518 (1985).

**[\*\*224]** As a result of all those factors, <sup>HN6</sup> many courts have significantly eased the burden on custodial parents in removal cases. See *In re Marriage of Francis*, 919 P.2d 776, 784 (Colo.1996) (creating presumption that custodial parent's choice to move children should **[\*108]** generally be allowed); *Sefkow v. Sefkow*, 427 N.W.2d 203, 214 (Minn.1988) (holding noncustodial parent has burden of showing move will endanger child or is meant to frustrate noncustodial parent's relationship with child); *Auge v. Auge*, 334 N.W.2d 393, 399 (Minn.1983) (holding custodial parent is presumptively entitled to relocate); *Fortin v. Fortin*, 500 N.W.2d 229, 233 (S.D.1993) (interpreting state statute as incorporating presumption for removal); *Taylor v. Taylor*, 849 S.W.2d 319, 332 (Tenn.1993) (creating strong presumption in favor of custodial parent); *Long v. Long*, 127 Wis. 2d 521, 381 N.W.2d 350, 352 (1986) (holding removal permitted if custodial parent has good **[\*\*\*32]** reason for moving).

The shift in relocation law is underscored in three fairly recent court decisions. Chris Ford, *Untying the Relocation Knot: Recent Developments and a Model For Change*, 7 Colum. J. Gender & L. 1, 17 (1997). In *Tropea v. Tropea*, 87 N.Y.2d 727, 642 N.Y.S.2d 575, 665 N.E.2d 145, 151 (1996), <sup>HN7</sup> the New York Court of Appeals replaced the "exceptional circumstances" requirement with a general "best interests" test in relocation cases. Prior to *Tropea*, if a litigant could not prove exceptional circumstances justifying relocation, and the relocation would deprive the noncustodial parent of regular access, New York courts were compelled to deny the relocation request without considering the child's best interests. *Id.* at 149-50. *Tropea* changed direction and began a focus not on the needs and desires of the parents, but on the way those needs and desires relate to the child.

Likewise, in *In re Marriage of Burgess*, 13 Cal. 4th 25, 51 Cal. Rptr. 2d 444, 913 P.2d 473, 481 (1996), <sup>HN8</sup> the California Supreme Court abandoned the prior hostile approach taken toward the custodial parent in relocation cases. The court rejected a rigid **[\*\*\*33]** test that required a custodial parent to show a "necessity" for the move and said,

the 'necessity' of relocating frequently has little, if any, substantive bearing on the suitability of a parent to retain the role of a custodial parent. A parent who has been the primary caretaker for minor children is ordinarily no less capable of maintaining the responsibilities and obligations of parenting simply by virtue of a reasonable decision to change his or her geographical location.

**[\*109]** [*Id.* at 481.]

In place of the "necessity test," *Burgess* directed the lower courts to take into account the custodial parent's "presumptive right" to move.

The Colorado Supreme Court followed suit in *In re Marriage of Francis*, *supra*, 919 P.2d at 782. There, the custodial parent sought to move east to attend school. *Id.* at 778. The trial court ruled that if she enrolled in the school program, she would lose custody of her children. *Id.* at 779. <sup>HN9</sup> The Colorado Supreme Court reversed and held that the child's interests are so interwoven with the new family unit that a court must consider the custodial parent's interests:

[W]e find that the child's best interests are served **[\*\*\*34]** by preserving the custodial relationship, by avoiding relitigation of custody decisions, and by recognizing the close link between the best interests of the custodial parent and the best interest of the child. In a removal dispute, this leads logically to a presumption that the custodial parent's choice to **[\*\*225]** move with the children should generally be allowed.

[*Id.* at 784.]

Those cases embody <sup>HN10</sup> the growing trend in the law easing restrictions on the custodial parent's right to relocate with the children and recognizing the identity of interest of the custodial parent and child.

### III

An analysis of New Jersey's removal scheme begins with <sup>HN11</sup> *N.J.S.A. 9:2-2*. That act provides:

When the Superior Court has jurisdiction over the custody and maintenance of the minor children of parents divorced, separated or living separate, and such children are natives of this State, or have resided five years within its limits, they shall not be removed out of its jurisdiction against their own consent, if of suitable age to signify the same, nor while under that age without the consent of both parents, unless the court, upon cause shown, shall otherwise order. **[\*\*\*35]**

Several cases are instructive regarding the import of the "cause" provision of that statute. In